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EX PARTE OR LATE FILED

ORIGINAL

-M-E-M-O-R-A-N-D-U-M-

TO: Secretary, Federal Communications Commission

FROM: Chester Osheyack , Private Citizen

Re: CC Docket No. 96-45; Reply Comments pursuant to [DA 96 1891]

Specific Reference: Universal Service & Disconnect Authority

Attachment: Copy of filing with Supreme Court, State of Florida; In FPSC Docket No 951123-TP; excerpts from Initial Brief in Case No 89,538 Chester Osheyack v Susan F. Clark, Chairperson FPSC

Date: January 10, 1997

As a child in the first grade of elementary school, I can recall that each day began with a request that the class stand, face the flag placed prominently in one corner of the classroom, put our hands over our hearts, and recite the PLEDGE OF ALLEGIANCE "to the flag of the United States of America, and the republic for which it stands; one nation, under God, indivisible, with liberty and justice for all!" That was almost seventy years ago!

Now, there are powerful forces working diligently to "divide" what we were taught to believe should be "indivisible", and to deny "justice for all" Americans irregardless of where they reside in our great land. The issue of States Rights vs Federal Responsibilities is again being sharply debated. In reality, few will argue that either governing body could or should be replaced by the other. The resolution of this contentious issue then, lies in finding the most effective way to apportion the shared powers and responsibilities of the State and Federal governments.

In considering the matter of "DISCONNECT AUTHORITY", it would appear that the Congressional "findings" as articulated in the Telephone Disclosure & Dispute Resolution Act (TDDRA) of 1992 can be considered to be quite relevant. The stated purpose of the "ACT" was to "protect the public interest....by providing for regulation and oversight of the....industry."

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Cited in the Congressional "findings" as bases for the ACT were the following: (1) exponential vertical industry growth and extraordinarily rapid horizontal growth due to technological innovations; (2) the interstate nature of the industry's development which places much of its activities beyond the reach of individual states; (3) the lack of nationally uniform guidelines which inevitably cause confusion as to the rights of telephone service subscribers and service providers, and the oversight responsibilities of the regulatory authorities; (4) the need for clarity and constancy in articulating the rights and responsibilities of the parties. What strengthens the relevance of this analogy are the more recent developments which muddle the unique characteristics of the defining labels sic LOCAL EXCHANGE CARRIER and INTEREXCHANGE CARRIER. Both of these categories of service provider are currently or contemplate offerring competing wire related communications services to each others customers irrespective of geographic location, limited only by the need for local certification.

It is important to note, with respect to the substance of the TDDRA, that it clearly DISALLOWS SUBSCRIBER DISCONNECTION OR INTERRUPTION OF LOCAL TELEPHONE SERVICE FOR NON-PAYMENT OF NON-RELATED BILLS. Thus, the precedent for repeal of disconnect authority, which the FCC deferred to the states for purposes that are no longer valid, already exists in federal law. The simple fact is that, while some states have repealed disconnect authority on their own initiative and in the interest of their own constituencies, the majority have not, and many never will. For reasons that might vary from ineptitude, inexperience, corruption, or some other form of misguided self-interest, the telephone service subscribers...the people of our nation.... are being denied justice and equal treatment under federal and Constitutional law.

There is no logical reason to consider long distance telephone service, or for that matter any other wire based telecommunications service , as being in any different category than those services recognized in the TDDRA as lacking in linkage with what is defined under law as BASIC LOCAL TELEPHONE SERVICE. The subscriber should receive whatever product

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or service he pays for, and the denial of service for non-payment of bills or debts when necessary and appropriate under law, should be limited to that service for which payment is in default.

FCC Chairman Reed E. Hundt, in an exchange with Representative Christopher Cox of California at a Congressional sub-committee hearing in May, 1995, made the following comments:
".....last year (1994), for the very first time, the percentage (penetration of telephone service in total population) dropped about one-half of one percent from the statistics, and that is a meaningful drop. It's the first time in decades."

".....Based on the study that we've done so far, the reason for why people are beginning to drop off the telephone system is because we have erroneously linked long distance bills to local telephone bills, and in many places you lose your local service if you have trouble paying your long distance bill. I don't think that is logical. We should change that."

Chairman Hundt is correct! There is no logical nexus between basic local telephone service and long distance telecommunications services. Further, where there are measured rate charges, the cost is logged upon the completion of the call and the customer never knows the magnitude of his bill until he receives it....in most cases long after the expense is incurred. Moreover, as new technological innovations are presented to the market, the bills will get larger and delinquency and non-payment of bills will increase proportionately. Thus the future of the industry must be secured through proper administration of sensible credit policies which meet contemporary market needs. Continuation of severe and abusive non-judicial punishment as a telephone bill collection strategy serves no useful purpose, and is certainly not good public policy.

Now therefore, sound public policy requires that the FCC reclaim its proper juristiction over disconnect authority, and that this debt collection tactic ,

which is incompatible with our national standards, be repealed by action of the federal government.

As to the telecommunications companies, it will be necessary for them to determine first, what is legally and morally right, and then to find a way to economically achieve that goal. Given an environment of constancy in application of law, and a predictable consistancy between policy and law, you may be sure that American industry can and will rise to the occasion of the need, and bring forth a customer friendly solution to what is today perceived as a problem. It will continue to be a problem, only until it is solved, and it won't be solved until the federal government acts to impose uniformity in the administration of justice under Federal and Constitutional law.

On point, it should be said that real UNIVERSAL TELECOMMUNICATIONS SERVICE, as is mandated under law, will never be achieved while the trade practice known as DISCONNECT AUTHORITY remains as public policy. Moreover, in the absence of a national standard in this matter, corporate planners within the telecommunications industry cannot intelligently address this issue, and it will continue to deal with it in a tentative manner.

I am enclosing excerpts of my filing with the Florida Supreme Court which I consider to be germane to your deliberations in this matter. This court filing represents the culmination of a four (4) year effort to obtain justice in my interest and the public interest in my State of Florida.

In 1983, Congress abrogated its responsibility and abandoned the oversight of the telecommunications industry to the Commissions and the Courts. In subsequent actions, the federal commission deferred its responsibility to the state commissions. Most states then did whatever the industry wanted them to do on the premise that by doing so they were serving the public

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interest. Now the public interest standard has changed, and under the new federal law, competition in the local markets is the new national standard. It is, therefore, no longer appropriate for the states to establish individual policies which have the potential for creating discriminatory conditions and substantial confusion. Billing and collection is a market based operational function. It must be regulated in accordance with a national standard, and in compliance with federal law.

Sincerely,

Chester Osheyack

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excerpt (1) of (20) pages

BEFORE THE SUPREME COURT OF FLORIDA

IN THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 951123-TP
ORDER NO. PSC-96-1371-FOF-TP
ISSUED : November 19, 1996

APPELLANT)
Chester Osheyack, Private Citizen)
)
V.) INITIAL BRIEF
APPELLEE)
Susan F. Clark, Chairperson)
Florida Public Service Commission)

In re: Proposed Amendment of) DISCONNECT AUTHORITY: defined as the right
Rule 25-4.113 (1) (f) FAC,) granted by regulatory tariff to local exch-
Refusal of Discontinuance of) ange telephone companies to block and/or
Service By Company) terminate local and emergency telephone service; and, access to competing long distance networks, as a tactic for the collection of toll bills in dispute or default.

DISCONNECT AUTHORITY, A CASE HISTORY

In 1984, the FPSC, believing that the local exchange telephone companies would not be able to survive financially after divestiture, permitted them to generate additional revenues through the sale of basic access service, short distance toll service, and certain ancillary services (sic billing and collection) to the interexchange carriers. In order to enhance the value of the collection service, and as an incentive for the IXCs to purchase it, the FPSC further granted the LECs the right to terminate basic local and emergency service in order to strengthen their

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ability to collect bills in default or dispute. During the initial discussions and prior to the FPSC Final Order, the record will show that the LEC's attorneys expressed serious doubts as to the ability of the LECs to collect debts that they did not own under conditions as outlined above. It was the stated belief of the Commissioners at that time, that ownership of the debt was not required. At a later date, however, the FPSC did grant an LEC petition to purchase accounts receivable from the IXCs, purportedly "to alleviate the problem of maintaining multiple balances and prorating partial payments received from customers". While this "excuse" may well have been a consideration, the more likely motivation for the request was to bring the collection procedure into compliance with the federal Fair Debt Collection Act (Title VIII of the Consumer Credit Protection Act),S 803 (4) which excludes from the definition of "creditor" (and thereby denies the right of the collector to take punitive actions) any party who receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another". These were defining decisions in setting a direction for future regulatory policy in that they provided a legal defense for the telephone companies while disregarding other elements of the same federal law which addressed the matter of

protection of the consumer from abuse. In other words, the rights of the end user were sacrificed to secure the financial health of the LECs. In all fairness to the FPSC, their objective was to guarantee uninterrupted basic local telephone service and their orders were consistant with the perception of the public interest

at that time. Contrary to the overriding concerns which led to the approval of this abusive trade practice, the public records published in 1996, clearly show that these companies are enjoying annual double digit increases in revenues and profits; they have for the most part tripled, and in some cases quadrupled the value of their equity over the past twelve (12) years; and the projections of financial analysts suggest a continuation of this kind of performance well into the future.

DISCONNECT AUTHORITY AND THE LAW

After divestiture in 1984, the US Congress abandoned its responsibility for oversight and evaluation of the telecommunications industry to the Commissions and the Courts. The resulting lack of nationally uniform regulatory guidelines has led to confusion ion for end users, subscribers, industry participants and regulatory agencies as to the rights of consumers and responsibilities of the regulators. This deficiency has allowed the telephone companies to engage in practices that abuse the rights of consumers. Individual state regulators, acting initially out of legitimate concern for the continuity of basic local service and access to long distance service for their communities, were later

constrained by an unwillingness to challenge rules, which although obsolete, had become institutionalized. As a consequence, agendum were tolerated which are misleading and harmful to the public interest or contrary to accepted standards of business practice in the private sector. For more than twelve (12) years, the Modified

excerpt (4)

Final Judgement (MFJ), issued by the presiding federal court after the break-up of the national telephone monopoly in 1983, has been the governing influence in the decisions of the courts and the regulators through out the nation in matters bearing upon local and interexchange telephone companies with respect to their relationship with each other, with governments, and with their customers. However, the MFJ neither contemplated the advent of competition in the local markets, nor the vast changes which have occurred or have been projected as a result of new or developing technology. Thus, the MFJ can no longer be relied upon as a credible legal precedant for future decisions. In fact the telecommunications companies themselves have led the way in bringing the MFJ into conformity with current market conditions by successful challenges in numerous recent court actions. There have also been material changes in applicable federal law which reflect unanimity of opinion in Congress on the fundamental objectives of deregulation of the industry and protection of the consumer from predatory and abusive trade practices. It is important also to note that the courts of the land have historically in the past, addressed telecommunications industry issues brought before them under the DOCTRINE OF SPECIAL CIRCUMSTANCES...the special circumstances in their case being the restrictions and

and commensurate protections of monopoly. Current federal and state law has created the opportunity for the respective regulatory agencies to eliminate the restrictions. Accordingly the protections must now be vulnerable to attack.

The Florida Consumer Collection Practices Act (Ch 559.55) is consistant with the Federal Fair Debt Collection Practices Act (Title VIII of the Consumer Protection Act). Further, we find that FS Ch 559.55 (2) provides that the federal law will prevail where there are inconsistancies or omission in the State law. Accordingly, effective January 1, 1996, when monopoly status was withdrawn from the incumbent LECs, those which continue to exercise "disconnect authority" , except for the protection of the FPSC approved tariff, would be in a state of non-compliance with the federal law, which precludes a "debt collector" from utilizing extreme or abusive non-judicial means for collection of a debt in which they do not have a real security interest.

The telephone companies, under monopoly regulation, have proven themselves to be exceedingly skillful in the art of deception and obfuscation. It is only recently, that in the heat of competition, the local, regional and long distance carriers have begun to expose each others predations and transgressions to the attention of the public. Using creative accounting and corporate structuring, they have succeeded in hiding profits and inflating expenses, thereby manipulating the actions of the state Commissions. Their high earnings and cash flow have provided the funds with which to engage in expensive litigation to intimidate when unable to influence by intensive lobbying. They have made heavy investments in government relations through lobbying and other means of financial part-

icipation in the political process in order to obtain favorable legislation and regulation. However, notwithstanding this past history, we are at a point today, where the interests of the telecommunications companies, the government and the public are converged on a common objective of achieving competition in the communications industry. While there may be disagreement on the definition of what is "full and fair competition", or the means of achieving it, there is complete accord on the goal. Accordingly, the "customary industry practices", which government has defended in the past, are destined to fall under scrutiny of either government itself, or alternatively, the Courts. Legal precedents achieved under monopoly regulation can no longer bear weight. The intents and purposes of new law must frame the issues and dictate the direction of new policies. The propriety of "disconnect authority" must now be evaluated against the criteria of current law and contemporary interpretation of the public interest. So must we now examine the issue of "disconnect authority" in the context of FS (1995) Ch 364 as amended.

FS Ch 364.01 (1) and (2) provide for the Public Service Commission both the power and the commensurate responsibility to make policy which is designed to implement the Legislative intent as stated in Ch 364.01 (3) as follows:

excerpt (7)

"The Legislature finds that the competitive provision of telecommunications services, including local exchange communications service, is in the public interest and will provide customers with freedom of choice, encourage technological innovation, and encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof, will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal anti-trust laws. etc, etc" Given the responsibility and the power, it is important that the Public Service Commission make policy to conform with the intents, purposes and language of the law.

FS Ch 364.025 (1) establishes UNIVERSAL SERVICE as a mandate, and defines Basic Local Exchange Telecommunications Service as a minimum standard for provision thereof as follows:
"For the purpose of this section, the term UNIVERSAL SERVICE means an evolving level of access to telecommunications services that, taking into account advances in technologies, services and market demand for essential services, the Commission determines should be provided at just, reasonable and affordable rates to customers, including those in rural, economically disadvantaged, and high cost areas. It is the intent of the Legislature that UNIVERSAL SERVICE objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of

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the Legislature that during this transition period the ubiquitous nature of the local telecommunications companies be used to satisfy these objectives. For a period of four (4) years after the effective date of this section, each local exchange telecommunications company shall be required to furnish BASIC LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE to any person requesting such service within the company's service territory."

FS Ch 364.02 (2) clearly defines BASIC LOCAL EXCHANGE SERVICE as follows: "....voice grade, flat rate residential, and flat rate business local exchange service which provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency service such as 911, all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing."

Note that the law does not include or imply exclusionary qualifications of any description. I respectfully submit that the above noted chapters of the Florida statutes as amended provides a reasonably sound basis for the conclusion that the DISCONNECT AUTHORITY rule is no longer appropriate since it does not meet the test of current State law.

DISCONNECT AUTHORITY AND THE CONSTITUTION

The first (1st) and Fourteenth (14th) Amendments to the Constitution

excerpt (9)

of the US of A, specifically address the guarantee that no State shall "deprive any person of life, liberty or property without due process of law...." In enacting subsequent legislation (sic the Fair Debt Collection Practices Act as amended), the US Congress institutionalized denial of the right of any "debt collector" to take non-judicial punitive action, and specifically rejected the right of a "debt collector" to disable property as a remedy in debt collection. Addressing the issue of "disconnect authority" in this context, note as follows: inside wiring including telephone jacks are installed by licensed electricians and maintained at the expense of the owner or lessor of the home in which they are installed. They are, therefore, the personal property of the owner or lessor of the premises. Telephones, answering machines, fax machines, computers and other equipment and/or technology which is ancillary to communications over wire, are customarily purchased and thereby become the personal property of the purchaser. The homeowner or renter of the premises then proceeds to purchase access to the communications networks from the local certified source (in Tampa for an amount of $55), and by the exchange of consideration for access, he becomes the owner of the access which is evidenced by a dial tone. But under the current rule, we find that by force of a tariff, approved by the unelected government regulatory officials, the local debt collector for certain of the interexchange companies, is given the right to disable the above described personal property by disconnecting the paid for access to what is supposed to be a free and competitive market, for the express purpose of leveraging the collection of a debt on behalf of a client company. Thus, a creditor's

agent is able to take non-judicial punitive action against a debtor or an alleged debtor if the debt is challenged, by force of a tariff approved by unelected government regulators, which unreasonably nullifies the Constitutional guarantee of due process. Now therefore,by virtue of this tariff, non-judicial punishment for breach of rules contrived jointly by a small group of corporations in 1984, is regularly utilized as a part of an obsolete and unlawful bill collection procedure. This kind of act can be characterized as corporate vigilantism, and government should have no part in supporting such behavior.

DISCONNECT AUTHORITY AND TOLL BLOCKING

The telecommunications industry spokespersons at the PSC Hearing of February 1, 1996 and in subsequent written comments offerred the suggestion that it might be appropriate to allow universal basic local telephone service on condition that there be global toll blocking permitted to support the bill collection process. Global toll blocking is defined as denial of access to all sources of long distance telephone service. This tactic must be opposed on the basis of both process and law. With respect to process, the FPSC has no juristiction over interstate or international toll billing, and there exists no acceptable dispute resolution procedure or unbiased mechanism for arbitration of disputed long distance bills. Thus, absent some reasonable form of "due process", non-judicial punitive action by a local carrier can be considered to be an excessive and unfair strategy for collection of disputed debts.

excerpt (11)

With respect to law, one must look to FS Ch 501.204 (2) which states the intent of the Legislature in construing (unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce)....."due consideration and great weight shall be given to interpretations of the Federal Trade Commission and the federal courts relating to.... .....the FEDERAL TRADE COMMISSION ACT". There is little question that one could reasonably challenge global blocking as collusion in restraint of trade, since the invocation of the act is triggered by an accord among a small group of corporations, and results in denial of access to a large group of competitors. This is a particularly effective argument in the light of the new federal telecommunications law and the subsequent announcements by local exchange companies of contracts and strategic alliances which identify them as competitors of the very interexchange companies for which they perform billing and collection service. More recent developments which will lead to the entry of the long distance companies into the local markets enhance the argument. Additionally, there exists the probability of non-compliance with FS Ch 542.19 which prohibits combinations for the purpose of monopolizing any part of trade or commerce in this State; FS 364.01 (3) which requires that the consumer have "freedom of choice"; FS Ch 364.02 (2) which defines basic local telephone service as inclusive of "access to all locally available interexchange companies"; and FS Ch 364.025 (1) which mandates Universal Telephone Service. One must also consider global blocking in the context of the possibility of permitting a politically motivated compromise to interdict progress toward the objectives

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of telecommunications reform laws. Permitting what is unquestionably an interim measure at best, may delay or defer transition to competition and/or investment in infrastructure, contrary to Legislative intent as stated in FS 364.01 (4b)(4d) and (4f), which are mandates upon the Commission to eliminate rules which may delay or impede transition to competition, and to actively promote and encourage competition. There can be little question that interdependancy among competitors is a disincentive to real competition.

DISCONNECT AUTHORITY AND JOINT AGREEMENTS AMONG COMPETITORS

Joint agreements among competitors have always been subject to suspicion and scrutiny. They have been historically viewed as providing opportunities for mutual forebearance and anti-competitive trade-offs. Thus there are significant questions that need to be addressed with respect to disconnect authority and the underlying joint operations agreements (sic billing and collection) between the LECs and IXCs particularly as they relate to current market conditions, applicable law, and interpretation of what is the public interest.

After several meetings conducted in 1984, an aggregate of sixteen (16) local and interexchange telephone companies serving the Florida markets, signed on to a JOINT STIPULATION & AGREEMENT (effective dte May 17, 1984), in which they affirmed mutual accord, subject to FPSC approval, to the following declarations:

(1) The LECs would provide billing and collection service for the IXCs at predetermined rates and conditions, with the proviso that the LECs would continue to possess the authority to disconnect

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local telephone service to collect toll bills pursuant to the right previously granted by the FPSC in Order No 12765 dtd Dec 9, 1983; and,

(2) The LECs would purchase accounts receivable from the IXCs under preestablished terms and conditions, with the proviso that there be a recourse procedure which would enable the LECs to charge back uncollectible receivables to the IXCs from which they made the purchase.

On June 18, 1984, by Order No. 13429, the FPSC gave its qualified approval to the "joint operations agreement" on grounds that "it met the test of public interest standards" at that time. The following qualifications were applied:

(1) Receipt of an acceptable uniform tariff within 30-days

(2) Requirement that the tariff include a uniform rate structure for specifically identified services to be rendered

(3) Requirement that the tariff should include specific procedures for handling disputed charges where the IXC has purchased the inquiry component and where it has not done so; and,

(4) Requirement that the tariff should specify whether the LEC is the final decision-maker in the handling of disputes when it purchases receivables and the IXC handles its own inquiries, as well as when a dispute between the IXC and the customer cannot be settled.

There are a number of serious questions raised by the above referenced documents, particularly when tested against the standard of current law and interpretation of the public interest.

(1) The "joint agreement" presumed that there would be a single entity with monopoly control in each of the telephone markets.

excerpt (14)

THIS IS NO LONGER A VALID PREMISE!

(2) The Legislature decreed in 1995 that the public interest is best served by COMPETITION rather than MONOPOLY. THIS MANDATED A NEW PUBLIC INTEREST STANDARD!

(3) The signatories of the "joint stipulation & agreement" of 1984 are considered under current market conditions to be COMPETITORS. The fact that competing interests are brought together in an "industrial combination" which has vested exclusive management control over certain sensitive marketing functions, in a single entity chosen from among their number, and within a defined market area, should provide cause to believe that the accord can be viewed as an illegal "trust" under the law.

(4) The "joint stipulation & agreement", and the FPSC Order require a uniform rate structure to be applied to the purchase of services by the IXC from the LEC. It is therefore, reasonable to assume that the imposition of such uniformity may restrict or even eliminate the possibility of competition by discouraging introduction of new technology and/or cost saving procedures.

(5) The "joint stipulation & agreement" requires that the LECs must have, hold and utilize disconnect authority as a collection tactic. Thus the signatories are locked into a uniform customer service practice which eliminates the need, in fact the opportunity, to compete with other signatories. THIS IS A DISINCENTIVE TO COMPETITION FROM WITHIN THE GROUP!

(6) The "bonding" of this group in an agreement which is based in a collection practice which is not available to resources outside of the group, precludes competition, for example from banks or credit

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card companies. THIS IS A DISINCENTIVE TO COMPETITION FROM OUTSIDE OF THE GROUP!

(7) The "recourse" provision in the "joint stipulation & agreement" has the effect of eliminating the risk of financial loss to the LECs. Absent this risk of loss, the LECs have no real security interest in the debts that they are attempting to collect. Now therefore, under the provisions of the Fair Debt Collection Practices Act (Title VIII of the Consumer Credit Protection Act; S 803 (4)), they are not deemed to be a "creditor" by definition of the law. Accordingly, they are precluded from taking extreme non-judicial action (sic disconnection of an unrelated service which is in fact disablement of personal property) for the purpose of collecting a third party debt.....except of course, for the fact that the unelected government regulators, by their approval of the disconnect authority tariff, nullify the law. There are also questions raised in the review of the FPSC Order No 13429 dtd June 18, 1984 which need to be addressed.

(1) The FPSC Order mandates specific procedures to be identified with respect to the handling of disputed IXC charges; and,

(2) The FPSC Order mandates the establishment of a chain of responsibility for decision-making in the handling of disputed IXC charges in the event that the IXC handles its own inquiries, and in the event of inability to settle a dispute between the IXC and the customer. These mandates show great foresight on the part of the FPSC in 1983-84, since they did anticipate a need for discipline in this extremely sensitive credit process in order to prevent consumer abuse. It is interesting to note that there does not appear to be any clear references to such procedures in either FS Ch 25.4 or FS Ch 364. In the

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excerpt (16)

absence of such a procedure, it is possible that disconnect authority may be invoked by an LEC while a dispute is in the process of negotiation between the IXC and the customer; or alternatively, disconnect authority may be invoked in the absence of a mutually agreeable resolution to such a dispute. Such actions may be construed as non-compliance with the above referenced FPSC Order (and the resulting tariff); and, obviously involves a Constitutional issue in that there is imposed a severe punishment without realization of fault.
Except for the subsequent approval of the FPSC of the JOINT STIPULATION & AGREEMENT on the basis of the interpretation of the public interest at that time, this "combination" of sixteen (16) local and interexchange companies would have been considered illegal under both federal and state anti-trust laws. But, effective January 1, 1996, the effective date of the amendatory provisions of FS Ch 364, the lawful monopoly status was withdrawn from the incumbent LECs, thereby altering the regulatory framework in a manner designed to promote and encourage competition. However, it is interesting to note, that the official transcripts of the PSC Hearing of February 1, 1996, and the PSC Agenda Conference of November 12, 1996, evidence that the same sixteen (16) companies, in concert with the unelected regulatory officials, are continuing to uphold and defend obsolete rules which enable denial of free access for the consumer to the competitive networks of long distance telecommunications companies which today number in excess of 200; and, of course they concurrently deny the competitive networks free access to the consumer markets.

excerpt (17)

One of America's most cherished values, and one that is guaranteed by both State and Federal Constitutions, is FREEDOM OF CHOICE. The essence of real competition is the empowerment of the consumer...and COMPETITION has been codefied in both the State and Federal telecommunications laws as amended and to be effective in 1996....as being the public interest standard. Therefore, it is reasonable to expect that the right of consumer choice be extended beyond that of the providers of telecommunications services, but should also include choice in the source of credit providers, if credit is desired, or alternatively, the right not to choose credit. It can be safely stated that banks and credit card companies are waiting in the "wings" to offer either credit or debit cards for use in payment of telephone bills, but while government regulators sustain the obsolete practice of disconnect authority for certain favored credit providers, there will be no competition in this arena.

SUMMARY

There are profound forces which are shaping and altering the manner in which the telecommunications industry conducts its business. Unleashed by the enactment of new State and Federal legislation, and energized by the dynamics of expanding developments in technology and marketing, these forces are pressing a growing administrative burden on corporate and government cultures that have never before experienced competition or horizontal growth opportunities. To keep abreast of the demands of new technology, new distribution methods, and a plethora of new products and services that have been added to

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excerpt (18)

the milieu, the managers of the critical and commensurately sensitive billing and collection operations are compelled to confront the need for change. This may not be an easy transition for them, because their trained instincts lead them to react with great caution to what they might consider to be immoderate deviations from industry norms. But the transition from monopoly to competition is a sea change that is bringing old rules into conflict with new norms, and modification of the systems has become an inescapeable necessity.

Consider the following evaluation of the existing system currently in use:

(1) The System Is Ineffective

The most credible information that we have available is that which has been profferred to the FPSC and the press by GTEFL during a three (3) year period commencing in 1993. These publicly recorded statements indicate that GTEFL has been disconnecting approximately 120,000 customers per year for non-payment of long distance billing; that the collection rate against these delinquencies is less than 15%, which means that about 85% of the customers who lose service may never be returned to the active account list; that uncollectibles have been trending upward for several years....and, despite this record of disconnections, GTEFL has appeared before the FPSC for at least three (3) consecutive years since 1993 to give testimony that the problem keeps getting worse. THESE STATISTICS STRONGLY SUGGEST THAT DISCONNECTION OF LOCAL SERVICE TO COLLECT DEBTS HAS BEEN TOTALLY INEFFECTIVE IN SOLVING THE PROBLEM!

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excerpt (19)

(2) The System Is Vulnerable

We are told by telecommunications industry spokespersons that the system is replete with hazards for their companies; that it lends itself to manipulation for fraudulent purpose by unscrupulous customers; and, that there are no known ways to secure the system against nefarious scheming on the part of the public. (see the transcript of the FPSC Hearing in Docket No 951123-TP; February 1, 1996 and associated written filings). Thus, in their collective view, there appears to be no alternative to reliance on the threat and fear of punishment sic disablement of the telephone by disconnection of all service as a preemptive discipline aimed at averting delinquency and default in payment of bills. I might add that this disconnection includes denial of incoming calls in which they have no financial risk. I liken this process to the leaving of dollar bills lying around unattended , then getting angry at the people who pick them up and use them; or perhaps leaving the car door open and the keys in the ignition while shopping, then getting angry at the thief who steals it. The telecommunications industry has a responsibility to avoid exposure to unnecessary risk of loss. Unfortunately, the system is administered under policies that reflect anger, frustration, and resentment which in turn leads to unintended consequences.

(3) The System Is Anti-Consumer

It makes no allowance for unbiased dispute resolution, It offers little benefit of doubt to the customer. It contains no means by which the customer may monitor and control his calling expense during the use

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excerpt (20)

of measured rate service with the result that the customer never really knows how much expense he is incurring until he receives a bill. In fact it encourages the end user to overextend his credit and then uses fear and intimidation to effect collection. Therefore, unless the subscriber uses a rate card and a stop watch on every toll call that he makes, he may well be the recipient of a bill that he cannot pay resulting from the use of credit that he does not want. The subsequent remedy is the equivalent of shooting a sparrow with an Uzi Machine Pistol.

(4) The System Is Excessively Punitive and Unlawful

It violates State and Federal Statutes regarding Fair Debt Collection and Fair Trade; it disregards the Constitutional guarantees of due process; and it is antithetical to the mandated goals of State and Federal law with respect to encouragement of full and fair competition, and achievement of Universal Telephone Service.

(5) The System Is Obsolete

It ignores the availability of a plethora of newly developed technology which has become an integral part of the credit culture; is acceptable to the public; and, beneficial to the service provider. Examples are secured credit, earmarked debit cards, check cards, and pre-paid telephone cards...none of which are useable unless you have dial tone. But why should the corporations innovate if the government regulators will defend obsolescence? why comply with the law if the government regulators are willing to ignore transgressions to serve expediency?

P.O.